

State FINAL SALE INSPECTION

The entire sale area should be inspected using Form 2460-2 (Timber Sale Inspection) by the Department of Natural Resources' representative in charge of the sale after completion of cutting. It is especially important to check all areas along the boundary, to prevent small isolated patches of timber from being left uncut, and to assure that all products have been skidded and scaled. If all of the timber has not been cut, or if all of the provisions of the contract have not been met, contact the contractor to see if the sale will be completed or damages assessed.

Thirty Days Prior to Termination of a Contract - Inspect sales area to see if completed, contract requirements met. Use Form 2460-13, Timber Sale Close-out Checklist.

1. If sale is satisfactorily completed:
 - a. Send letter to contractor saying sale is satisfactorily completed.
 - b. Return bond.
2. If sale area is not satisfactorily completed:
 - a. Send letter to contractor outlining the items which do not meet contract specifications. Include a detailed map when appropriate. Set a date for their reply or set a joint inspection date.
3. If contract extension is requested and extension is allowable, follow procedures outlined in Chapter 70.
4. If contract extension is not requested or termination is mandatory and yet the sale is not completed:
 - a. Cruise uncut and non-utilized timber.
 - b. If cut, scaled, and paid for wood is still decked on the sale, grant a short contract extension for removal of the wood only.
 - c. Notify contractor of termination and invoice for damages, unpaid stumpage and value of uncut timber (if unsalable).

If in the judgment of the sale administrator, the remaining timber is salable, amount due from contractor will include cost of reestablishing a sale on the area and reduced value of uncut timber when resold.
 - d. Upon receipt of payment, refund performance bond.

PERFORMANCE BOND RETENTION FOR REPAIR OF DAMAGES ON STATE LAND

The funds from the performance bond for a particular sale may be used by a property to fund the cost of repairing damage caused by the contractor on the timber sale. Actual physical damages are recoverable under this policy. Associated administrative costs will also be retained from the bond but are not reimbursed to the property.

The procedure for notice of breach and bond retention is as follows:

Notice of Breach

The contractor should be notified in writing of the breach of contract, detailing the facts of the breach, as well as specific damages, if known.

The letter should also outline a time frame for correction of the problem by the contractor if that is an option you want to offer the contractor, as well as notice that failure to correct the problem within the specified time period will result in the retention of all or part of their performance bond.

If damages cannot be calculated at the time of notice of breach, the contractor should be notified that the performance bond will be retained by the Department to apply to damages incurred once the Department determines what the damages are. For example, the sale may have to be resold before damages can be determined.

If it appears that the amount of damages will exceed the bond, the contractor should be notified that they are responsible for the damages exceeding the performance bond, and if not paid the Department will pursue collection of them. The Forest Tax Section will work with the Bureau of Legal Services if collection assistance is needed.

A copy of this letter should be forwarded to the Forest Tax Section and your supervisor.

Letters of Credit and Surety Bonds

If the performance bond is a letter of credit or surety bond, the financial institution that issued the document should be notified in writing of the breach, detailing the facts of it and when it occurred, any corrective action offered the contractor, and the potential claim against the bond. Also, notify the bank or surety that a claim may be filed against the letter of credit or surety bond once the Department determines the damages incurred. This will help facilitate collecting against the letter of credit or bond. As long as the breach occurred within the period of its application, e.g. contract period, collection against it can occur following that period.

****Note** - In cases where the bank or surety might be unclear about this issue, it may be useful to place a telephone call to the institution, clarify the situation with them, and note the conversation in your file.

Repairing Damages

Contact the Timber Sale Specialist and/or Financial Specialist for the Forest Tax Section. **The actual repair to the sale area should not be done with DNR equipment or personnel.** Repairs should be accomplished by contracting through an independent third party contractor following Department of Administration purchasing guidelines. If local units of government are used, purchasing guidelines do not have to be followed. Damage repairs are limited to the actual costs associated with contract violations.

After repair work is completed, the bill should be sent to the Forest Tax Section with the close-out transaction. Be sure to itemize administrative versus actual damage costs.